

Appl. No. 10/803,318
Atty. Docket No. 2003B101A
Response dated January 10, 2007
Reply to Final Office Action of October 10, 2006

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REMARKS/ARGUMENTS

This reply is in response to the Final Office Action dated October 10, 2006. Claims 23-38 are pending in the application and stand rejected. Claim 36 has been amended to delete the "use" language and to recite the subject matter as a process for making a packaged structure. Claim 30 has also been amended to delete an inadvertently-recited "preferably" range. As no new matter has been added, nor any new issues raised, by the foregoing amendments, its entry and reconsideration of the claims are respectfully requested.

Claim 36 stands rejected under 35 U.S.C. § 112, first paragraph and 35 U.S.C. § 101. Applicants have amended the claim, thus obviating the rejections. Withdrawal of the rejection is respectfully requested.

Claims 23-35 and 37-38 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Lind *et al.* (U.S. Patent Publication No. 2001/0003624; hereafter “Lind”) in view of Agouri *et al.* (U.S. Patent No. 4,126,648; hereafter “Agouri”). Applicants respectfully traverse the rejection for the following reasons.

First, the Examiner acknowledges that Lind fails to disclose a blend comprising 60-90 wt% low density polyethylene and 40-10 wt% high density polyethylene. The Examiner then (erroneously) asserts that Agouri teaches a film comprising 60-90 wt.% low density polyethylene and 40-10 wt% high density polyethylene "for the purpose of obtaining a film having superior properties to a film comprising high density polyethylene alone." See Office Action at page 3, citing Agouri at column 2, lines 16-20 and column 5, lines 60-64. The Examiner then reasons, without further explanation, that one of ordinary skill in the art "would therefore have recognized the advantage of providing for the thickness of Agouri et al in Lind et al, which comprises a film, depending on the desired properties of the end product." See Office Action at page 3.

Applicants respectfully traverse the rejection on multiple grounds, including (1) that the Examiner has not established a *prima facie* case of obviousness, (2) that the combination of Lind and Agouri does not render obvious the claimed invention, and (3) that the Examiner has provided no motivation for one of ordinary skill in the art to combine Lind and Agouri in the first place. The Examiner's assertion, "providing for the thickness of Agouri et al in Lind et al, which comprises a film, depending on the desired properties of the end product," has nothing to do with

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the disclosures or teachings of either Agouri or Lind, and appears to Applicants to be merely conclusory, with no actual or reasoned motivation provided by the Examiner to combine the references, no less to combine them in such a way as to arrive at the claimed invention. There is no teaching, showing, or suggestion from within the references themselves to support the Examiner's assertion, nor has the Examiner provided any scientific or technical reasoning for one of ordinary skill in the art to make the spurious combination of references. As such, it is evident from the record that the Examiner has resorted to improper hindsight to reject the claimed invention, which is prohibited under M.P.E.P. § 2145(X)(A).

Second, the Examiner's assertion that "Agouri et al teach a film having 60-90 wt.% low density polyethylene and 40-10 wt% high density polyethylene (column 2, lines 16-20) for the purpose of obtaining a film having superior properties to a film comprising high density polyethylene alone (column 5, lines 6-64)" is followed merely by a conclusory assertion that it would have been obvious to one of ordinary skill in the art "to have provided for a blend comprising 60-90 wt.% low density polyethylene and 40-10 wt.% high density polyethylene in Lind et al. in order to obtain a film having superior properties to a film comprising high density polyethylene alone as taught by Agouri et al." On the contrary, Applicants respectfully traverse and assert that even the combination of Lind and Agouri does not teach, show, or suggest the claimed invention. As noted by the Examiner, Lind fails to disclose a blend comprising 60-90 wt% low density polyethylene and 40-10 wt% high density polyethylene. Applicants admit that Agouri discloses a low density polyethylene-based polymer composition for thin films or sheaths. However, the Agouri polymer composition is a grafted copolymer comprising at least one styrene monomer, possibly mixed with at least one acrylic monomer. See Agouri at column 1, line 61 to column 2, line 8. The monomer(s) are grafted onto a trunk constituted by a pre-formed combination or alloy containing 50-95 wt% low-density polyethylene and 50 to 5 wt% high density polyethylene and/or polypropylene, the portion of the grafted styrene monomer or mixture of monomers being 5 to 50 wt% of said grafted copolymer. *Id.* (emphasis added). See also *id.* at column 2, lines 48-53 (describing the two step process to make the polymer composition). Agouri also discloses that the pre-formed combination or alloy contains 55 to 85 wt% low density polyethylene and 45 to 15 wt% high density polyethylene and/or polypropylene.

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Id. at column 2, lines 16-20 (emphasis added). In any event, contrary to the Examiner's assertions, Agouri does not teach, show, or suggest a blend comprising 60-90 wt.% low density polyethylene and 40-10 wt.% high density polyethylene. Therefore, Applicants respectfully submit that Agouri fails to remedy the disclosure of Lind and, like Lind, fails to disclose a blend comprising 60-90 wt% low density polyethylene and 40-10 wt% high density polyethylene.

Accordingly, even the combination of Lind and Agouri does not teach, show, or suggest a film structure comprising an A/B/A structure, wherein core layer B comprises 60-90 wt% LDPE and 40-10 wt% HDPE, and wherein skin layers A are each independently selected from a composition comprising 80-100 wt% mPE, 20-0 wt% HDPE, and 20-0 wt% LDPE, as recited in claim 23 and its dependent claims. The combination of Lind and Agouri also does not teach, show, or suggest a film comprising an A/B/A structure, wherein the A layers are skin layers, which may be the same or different, each comprising an mPE having a density of between about 0.910 to 0.940 g/cm³, and wherein the B layer is a core layer including a blend comprising 60-90 wt% LDPE and 40-10 wt% HDPE, as recited in claim 24 and its dependent claims.

Furthermore, Applicants acknowledge that Lind discloses single or multilayer films of polymers or copolymers, as correctly noted by the Examiner. *See* Lind at paragraph [0013]. However, Applicants respectfully submit that Lind does not teach, show, or suggest single or multilayer films of high density polyethylene (HDPE) alone. Indeed, Lind discloses that HDPE is a "suitable polymer for blending" (i.e., not alone). *See id.* As such, the Examiner's assertion that it would have been obvious "to have provided for a blend comprising 60-90 wt.% low density polyethylene and 40-10 wt.% high density polyethylene in Lind et al. in order to obtain a film having superior properties to a film comprising high density polyethylene alone as taught by Agouri et al." is neither suggested by the references themselves nor, as far as Applicants can discern, based on any supported scientific or technical rationale. Therefore, Applicants respectfully submit that the Examiner has provided no motivation for one of ordinary skill in the art to combine and modify the teachings of Lind and Agouri to attain the claimed invention.

For any one or more of the foregoing reasons, Applicants respectfully submit that a proper obviousness rejection over Lind and Agouri has not been made and cannot be maintained. Thus, Applicants respectfully request reconsideration and withdrawal of such a rejection.

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Conclusion

Having demonstrated that the cited reference fails to disclose or suggest the invention as claimed, and all other formal issues having now been fully addressed, this application is in condition for allowance. Accordingly, Applicants request early and favorable reconsideration in the form of a Notice of Allowance.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated, since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket #: 2003B101A).

Respectfully submitted,

Date: 1/10/07



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